

Message Text

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C O N F I D E N T I A L STATE 296352

EXDIS

E.O. 11652: GDS

TAGS: PFOR, MILI

SUBJECT: AMENDMENT TO FOREIGN MILITARY SALES BILL

REF: SECTO 24017

FOR ASSISTANT SECRETARY ATHERTON FROM NEA/RA

PARIS FOR DEPUTY ASSISTANT SECRETARY SOBER

1. SENATE FOREIGN RELATIONS FOREIGN ASSISTANCE SUB-
COMMITTEE LAST WEEK TENTATIVELY APPROVED PROHIBITION
AGAINST DISCRIMINATION LANGUAGE WHICH HAD BEEN INCLUDED
IN DRAFT OF SECURITY ASSISTANCE LEGISLATION (S2662)

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TABLED BY SFRC STAFF FOR SUBCOMMITTEE MARK-UP. FOLLOWING

IS FULL TEXT OF PROVISION APPLICABLE TO MAP ASSISTANCE:

QUOTE

SEC. 104. IMMEDIATELY AFTER SUBSECTION (F) OF SECTION 505 OF THE FOREIGN ASSISTANCE ACT OF 1961 ADD THE FOLLOWING NEW SUBSECTION:

(G) (1) IT IS THE POLICY OF THE UNITED STATES THAT NO

ASSISTANCE UNDER THIS CHAPTER SHOULD BE FURNISHED TO ANY FOREIGN COUNTRY, THE LAWS, REGULATIONS, OFFICIAL POLICIES, OR GOVERNMENTAL PRACTICES OF WHICH PREVENT ANY UNITED STATES NATIONAL FROM PARTICIPATING IN THE FURNISHING OF DEFENSE ARTICLES OR DEFENSE SERVICES UNDER THIS CHAPTER ON THE BASIS OF RACE, RELIGION, NATIONAL ORIGIN, OR SEX.

(2) (A) NO AGENCY PERFORMING FUNCTIONS UNDER THIS CHAPTER SHALL, IN EMPLOYING OR ASSIGNING PERSONNEL TO PARTICIPATE IN THE PERFORMANCE OF ANY SUCH FUNCTION WHETHER IN THE UNITED STATES OR ABROAD, TAKE INTO ACCOUNT THE EXCLUSIONARY POLICIES OR PRACTICES OF ANY FOREIGN GOVERNMENT WHERE SUCH POLICIES OR PRACTICES ARE BASED UPON RACE, RELIGION, NATIONAL ORIGIN, OR SEX.

(B) EACH CONTRACT ENTERED INTO BY ANY AGENCY REFERRED TO IN SUBSECTION (G) (2) (A) OF THIS SECTION FOR THE PERFORMANCE OF ANY FUNCTION UNDER THIS CHAPTER SHALL CONTAIN A PROVISION TO THE EFFECT THAT NO PERSON, PARTNERSHIP, CORPORATION, OR OTHER ENTITY PERFORMING FUNCTIONS PURSUANT TO SUCH CONTRACT, SHALL, IN EMPLOYING OR ASSIGNING PERSONNEL TO PARTICIPATE IN THE PERFORMANCE OF ANY SUCH FUNCTION WHETHER IN THE UNITED STATES OR ABROAD, TAKE INTO ACCOUNT THE EXCLUSIONARY POLICIES OR PRACTICES OF ANY FOREIGN GOVERNMENT WHERE SUCH POLICIES OR PRACTICES ARE BASED UPON RACE, RELIGION, NATIONAL ORIGIN, OR SEX.

(3) THE PRESIDENT SHALL PROMPTLY REPORT TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE CHAIRMAN OF THE COMMITTEE ON FOREIGN RELATIONS OF THE SENATE CONCERNING CONFIDENTIAL

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ANY CASE IN WHICH LAWS, REGULATIONS, OFFICIAL POLICIES, OR GOVERNMENTAL PRACTICES DISCRIMINATING ON THE BASIS OF RACE, RELIGION, NATIONAL ORIGIN, OR SEX, INTERFERE WITH FURNISHING ASSISTANCE UNDER THIS CHAPTER TO ANY FOREIGN COUNTRY. SUCH REPORT SHALL INCLUDE (A) A DESCRIPTION OF THE FACTS AND CIRCUMSTANCES OF ANY SUCH DISCRIMINATION, (B) THE RESPONSE THERETO ON THE PART OF THE UNITED STATES OR ANY AGENCY OR EMPLOYEE THEREOF, AND (C) THE RESULT OF

SUCH RESPONSE AND THE EXTENT TO WHICH ANY SUCH DISCRIMINATION IS DIMINISHED OR ELIMINATED THEREBY.

(4) IF THE LAWS, REGULATIONS, OR GOVERNMENTAL PRACTICES OF ANY FOREIGN COUNTRY PREVENT ANY PERSON, PARTNERSHIP, CORPORATION, OR OTHER ENTITY OF THE UNITED STATES FROM PARTICIPATING IN THE FURNISHING OF ANY MILITARY ASSISTANCE, INCLUDING MILITARY EDUCATION AND TRAINING, UNDER THE PROVISIONS OF THIS ACT ON ACCOUNT OF THE RACE, RELIGION, NATIONAL ORIGIN, OR SEX OF SUCH PERSON OR, IN THE CASE OF A PARTNERSHIP, CORPORATION, OR OTHER ENTITY, OF ANY OFFICER, EMPLOYEE, AGENT, DIRECTOR, OR OWNER THEREOF, THEN THE PRESIDENT SHALL IMMEDIATELY TERMINATE SUCH ASSISTANCE.

UNQUOTE

2. SUBCOMMITTEE ALSO APPROVED SEPARATE SECTION APPLICABLE TO SALES, CREDITS AND GUARANTEES WHICH IS SIMILAR TO FIRST THREE PARAGRAPHS OF FOREGOING BUT WHICH HAS FOLLOWING FOURTH PARAGRAPH:

QUOTE

(4) IF THE LAWS, REGULATIONS, OR GOVERNMENTAL PRACTICES OF ANY FOREIGN COUNTRY PREVENT ANY PERSON, PARTNERSHIP, CORPORATION, OR OTHER ENTITY OF THE UNITED STATES FROM PARTICIPATING IN THE SALE OF ANY DEFENSE ARTICLE OR SERVICE UNDER THIS ACT OR UNDER ANY LICENSE ISSUED UNDER SECTION 38 OF THIS ACT ON ACCOUNT OF THE RACE, RELIGION, NATIONAL ORIGIN, OR SEX OF SUCH PERSON OR, IN THE CASE OF A PARTNERSHIP, CORPORATION, OR OTHER ENTITY, OF ANY OFFICER, EMPLOYEE, AGENT, DIRECTOR, OR OWNER OF SUCH
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PARTNERSHIP, CORPORATION, OR OTHER ENTITY, THEN THE PRESIDENT SHALL IMMEDIATELY CANCEL SUCH SALE OR SUSPEND SUCH LICENSE, AS THE CASE MAY BE.

UNQUOTE

3. FOR TACTICAL CONSIDERATIONS DEPARTMENT IS NOT OBJECTING TO FIRST THREE PARAGRAPHS OF PROVISIONS BUT IS SEEKING TO HAVE FOURTH SECTIONS PROVIDING FOR AUTOMATIC TERMINATION REMOVED BY SUBCOMMITTEE PRIOR TO ANTICIPATED COMPLETION OF ITS MARK-UP THIS WEEK, OR BY FULL COMMITTEE WHEN IT TAKES UP LEGISLATION FOLLOWING CHRISTMAS RECESS. HOWEVER, WITH KEY FOREIGN AID SENATORS SUCH AS CASE AND HUMPHREY FIRMLY COMMITTED TO RETAINING FOURTH SECTION, WE ARE NOT OPTIMISTIC ABOUT OUR CHANCES IN THE SENATE. WE

MAY THEREFORE HAVE TO CONSIDER WHETHER AND HOW THE SANC-
TIONS CONTAINED IN THESE PROVISIONS MIGHT BE MITIGATED BY
SOME LANGUAGE CHANGE WHEN THE BILL GOES TO CONFERENCE.

4. WE ARE MAKING MAJOR EFFORT IN THE HIRC AGAINST ITS
PASSING SECURITY ASSISTANCE LEGISLATION WHICH WOULD IN-
CLUDE PROHIBITION AGAINST DISCRIMINATION LANGUAGE SIMILAR
TO THAT CONTAINED IN PARA 4 OF SENATE VERSION. HOUSE
INTERNATIONAL RELATIONS COMMITTEE IS RESUMING MARK-UP OF
SECURITY ASSISTANCE BILL DECEMBER 16. COMMITTEE EARLIER
REJECTED PROHIBITION AGAINST DISCRIMINATION AMENDMENT
PROPOSED BY CONGRESSMAN SOLARZ WHICH WOULD HAVE TERMINATED

ALL ASSISTANCE UNDER THE ACT TO A COUNTRY WHICH PRACTICED
DISCRIMINATION. SOLARZ IS NOW CIRCULATING, BUT HAS NOT
YET INTRODUCED, A REVISED DISCRIMINATION AMENDMENT WHICH
IS IDENTICAL TO FIRST THREE SUBSECTIONS OF SENATE BILL
QUOTED ABOVE BUT WHICH HAS THE FOLLOWING, DIFFERENT
PARA 4:

QUOTE

(4) IF THE LAWS, REGULATIONS, OR GOVERNMENTAL PRACTICES
OF ANY FOREIGN COUNTRY PREVENT ANY NATIONAL OF THE UNITED
STATES OR ANY AMERICAN COMPANY FROM PARTICIPATING IN THE
FURNISHING OF--
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(1) ANY DEFENSE ARTICLES OR DEFENSE SERVICES--

(A) PROVIDED BY GRANT OR LOAN UNDER CHAPTER 2 OF PART II
OF THIS ACT,

(B) SOLD UNDER THE FOREIGN MILITARY SALES ACT, OR

(C) EXPORTED FROM THE UNITED STATES UNDER A LICENSE
ISSUED UNDER SECTION 414 OF THE MUTUAL SECURITY ACT OF
1954; AND

(2) ANY MILITARY EDUCATION OR TRAINING PROVIDED UNDER
CHAPTER 5 OF PART II OF THIS ACT; ON ACCOUNT OF THE RACE,
RELIGION, NATIONAL ORIGIN, OR SEX OF SUCH NATIONAL OR,
IN THE CASE OF A COMPANY, OF ANY OFFICER, EMPLOYEE, AGENT,
DIRECTOR, OR OWNER OF SUCH COMPANY, THEN THE PRESIDENT
SHALL IMMEDIATELY TERMINATE SUCH GRANT OR LOAN, CANCEL
SUCH SALE, SUSPEND SUCH LICENSE, OR TERMINATE SUCH
EDUCATIONAL TRAINING ACTIVITIES, AS THE CASE MAY BE.

UNQUOTE

YOU WILL NOTE THAT SOLARZ VERSION IS MORE PRECISE, CLEARLY LIMITED TO INDIVIDUAL TRANSACTIONS INVOLVING DISCRIMINATION, WHILE SENATE LANGUAGE IS AMBIGUOUS AS TO EXTENT OF APPLICATION OF SANCTIONS.

5. WHAT HOUSE COMMITTEE WILL EVENTUALLY DO IS NOW QUITE UNCERTAIN. WE SHALL DO OUR BEST TO KEEP YOU INFORMED OF ANY SIGNIFICANT DEVELOPMENTS. EVEN IF DEPARTMENT SUCCEEDS IN PREVENTING HOUSE APPROVAL OF SUBSECTION 4 THRUST, WE SHALL, OF COURSE, HAVE TO CONTEND IN CONFERENCE WITH SENATE PROVISION IF, AS SEEMS LIKELY, IT REMAINS IN SENATE VERSION. GIVEN

HURDLES REMAINING, YOU WILL PROBABLY WISH TO AVOID SPECULATION AS TO EVENTUAL OUTCOME.

6. IF DEPARTMENT'S EFFORTS ARE UNSUCCESSFUL AND LEGISLATION IS ENACTED WITH PROHIBITIONS AGAINST DISCRIMINATION
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AND WITH AUTOMATIC TERMINATION SANCTIONS, WE WOULD HOPE SOLARZ-TYPE LANGUAGE LIMITING APPLICATION TO INDIVIDUAL SALES AND LICENSES WOULD PREVAIL OVER MORE SWEEPING SENATE VERSION. IMPLICATIONS FOR OUR PROGRAMS IN SAUDI ARABIA WOULD NOT BE INELUCTABLE. DEPENDING ON SUCH LEGISLATIVE HISTORY AS MAY BE DEVELOPED, FOR EXAMPLE, IT MAY BE POSSIBLE TO CONSTRUE THE REFERENCE TO HOST COUNTRY QUOTE LAWS, REGULATIONS UNQUOTE AS NOT TRIGGERING THE SANCTIONS BY THE VERY FACT OF THEIR BEING ON THE BOOKS WHERE NO ATTEMPT IS MADE TO ENFORCE THEM. WERE THIS INTERPRETATION PERMISSIBLE, SAUDI HANDLING OF PARTICIPATION WOULD, IN FINAL ANALYSIS, DETERMINE WHETHER SANCTIONS WERE TO BE APPLIED TO OUR PROGRAMS THERE. WE HAVE, HOWEVER, NO WAY TO PREDICT AT THIS TIME WHAT LANGUAGE MAY BE ENACTED OR WHAT DEGREE OF INTERPRETATIVE FLEXIBILITY THERE MAY BE. EVEN IF PROHIBITED DISCRIMINATION WERE FOUND TO EXIST, THE SANCTIONS WOULD ONLY APPLY TO THE PARTICULAR TRANSACTION INVOLVED. IF SAUDIS WERE ABLE TO KEEP THEIR COOL AND NOT OVER-REACT, OTHER TRANSACTIONS COULD CONTINUE UNAFFECTED. IN SUM, IMPLICATIONS FOR OUR PROGRAMS IN SAUDI ARABIA IF PROVISIONS ENACTED WOULD DEPEND TO A GREAT EXTENT ON HOW ASTUTELY SAUDIS PLAYED THEIR OWN HAND.
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